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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Chance Coles,

10 Plaintiff,

11 v.

12 J. Francis, et al.,

13 Defendants.
14

No. CV-23-00020-TUC-JCH

ORDER

15 **I. Background**

16 On January 10, 2023, Plaintiff Chance Coles, who was then confined in the United
17 States Penitentiary (USP)-Tucson, filed a pro se document, which the Clerk of Court
18 docketed as a civil rights Complaint pursuant to 28 U.S.C. § 1331 and *Bivens v. Six*
19 *Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), to facilitate
20 its consideration. In a January 18 Order, the Court dismissed the Complaint with leave to
21 amend and gave Plaintiff 30 days to (1) pay the filing and administrative fees or file an
22 Application to Proceed In Forma Pauperis and (2) file an amended complaint using the
23 court-approved form included with the Order.

24 On February 6, Plaintiff filed his First Amended Complaint, an Application to
25 Proceed In Forma Pauperis, and a Motion for Appointment of Counsel. In a February 10
26 Order the Court denied the Motion and the deficient Application to Proceed and gave
27 Plaintiff 30 days to pay the filing and administrative fees or file a complete Application to
28 Proceed In Forma Pauperis.

1 On February 27, Plaintiff filed a letter, and on March 6 he filed an Application to
2 Proceed In Forma Pauperis and a second letter. In a March 14 Order, the Court denied the
3 requests for relief in Plaintiff's letters and denied the deficient Application to Proceed and
4 gave Plaintiff 30 days to pay the filing and administrative fees or file a complete
5 Application to Proceed In Forma Pauperis.

6 On March 20, Plaintiff filed a Request for Emergency Injunction and a letter. On
7 March 23, Plaintiff filed a Motion asking the Court to order USP-Tucson officials to
8 complete the Application to Proceed In Forma Pauperis form and to provide him a certified
9 six-month trust account statement. In a March 31 Order, the Court denied the request for
10 relief in the March 20 letter, denied the Motion, and gave Plaintiff 30 days to pay the filing
11 and administrative fees or file a complete Application to Proceed In Forma Pauperis.

12 On April 7, Plaintiff filed a Motion to Voluntarily Dismiss Case, which the Court
13 granted in an April 12 Order. The Clerk of Court entered Judgment the same day.

14 On April 14, Plaintiff filed a second Motion to Voluntarily Dismiss Case (Doc. 20).
15 On April 20, Plaintiff filed a Motion and Request for Assistance (Doc. 21) and a Motion
16 for Reconsideration (Doc. 22). On April 27, Plaintiff filed another Motion for
17 Reconsideration (Doc. 23).

18 On May 3, the Court (1) construed Plaintiff's second Motion for Reconsideration
19 (Doc. 23) as a Motion to Vacate Judgment and granted it; (2) denied as moot Plaintiff's
20 Motion to Voluntarily Dismiss, Motion for Assistance, and first Motion for
21 Reconsideration (Doc. 22); (3) vacated the Court's April 12 Judgment and reopened
22 Plaintiff's case; (4) vacated in part the Court's March 14 Order denying Plaintiff's
23 Application to Proceed In Forma Pauperis; (5) granted Plaintiff's Application to Proceed
24 In Forma Pauperis; (6) ordered Plaintiff to pay the initial \$350.00 filing fee; (7) dismissed
25 Plaintiff's claims for money damages; (8) dismissed without prejudice Defendants Francis,
26 Hernandez, Flores, and Smiguel; (9) joined Warden Gutierrez as a Defendant in his official
27 capacity only; (10) ordered Defendant Gutierrez in his official capacity to answer Plaintiff's
28 claims for injunctive relief in the First Amended Complaint (Doc. 4) and to respond to

1 Plaintiff's Request for Emergency Injunction (Doc. 13); and (11) directed the Clerk of the
2 Court to send Plaintiff a service packet. Doc. 24 at 10–11.

3 The Court's May 3 Order also (1) directed Plaintiff to complete and return the
4 service packet to the Clerk of the Court within 21 days; (2) advised Plaintiff that any
5 amended complaint must comply with Rule 15 of the Federal Rules of Civil Procedure; (3)
6 warned Plaintiff that failure to obtain a waiver or complete service within 60 days could
7 result in dismissal; (4) warned Plaintiff that failure to file and serve a notice of a change of
8 address under Rule 83.3(d) of the Local Rules of Civil Procedure could result in dismissal;
9 and (5) warned Plaintiff that failure to timely comply with every provision of the Order
10 could result in dismissal. Doc. 24 at 8–9.

11 On June 8, having not received back Plaintiff's service packet, the Court ordered
12 Plaintiff to file written notice demonstrating good cause no later than June 20. Doc. 26.
13 Plaintiff did not respond. *See generally* docket.

14 On September 11, Plaintiff filed a Second Amended Complaint without leave of
15 Court or explanation of his failure to comply with the Court's Orders. *See* Doc. 27.
16 Plaintiff's Second Amended Complaint is nearly identical to the first. *Compare* Doc. 4,
17 *with* Doc. 27. The Second Amended Complaint was signed August 15, and mailed from:
18 "United States Penitentiary Atwater, P.O. Box 019001, Atwater, CA, 95301." Doc. 27 at
19 6; Doc. 27-1.

20 **II. Analysis**

21 The Court will dismiss Plaintiff's case because Plaintiff failed several times to
22 comply with the Court's orders, failed to comply with the Rules of Civil Procedure, and
23 fails to state a claim for which relief may be granted.

24 First, Plaintiff has failed to comply with the Court's orders. The Court had to remind
25 Plaintiff several times not to send letters to the Court, the undersigned, or staff. *See* Doc.
26 12 at 2 n. 1; Doc. 16 at 2. Plaintiff also struggled to follow the Court's instructions on how
27 to correctly file his In Forma Pauperis paperwork. *See* Doc. 8 at 2; Doc. 16 at 2–4. Finally,
28 and most critically, Plaintiff failed to follow the Court's direction to notify the Court of an

1 address change, return the Court's service packet, and explain his failure to return the
2 Court's service packet. *See* Docs. 24, 26. In particular, Plaintiff's failure to notify the Court
3 of any potential address change is compounded by the fact that the Court warned Plaintiff
4 of the consequences on several occasions. *See* Doc. 3 at 3; Doc. 8 at 3; Doc. 12 at 4; Doc.
5 16 at 4; Doc. 24 at 8–9.

6 Second, Plaintiff has failed to comply with the Federal Rules of Civil Procedure.
7 Rule 15 requires leave of Court to amend a complaint more than 21 days after serving it.
8 Fed. R. Civ. P. 15(2). Plaintiff is not entitled to amend his complaint as a matter of course
9 at any time simply by failing to serve it at all. *See* Fed. R. Civ. P. 15(1). That would not be
10 consistent with the Rules' purpose of securing "the just, speedy, and inexpensive
11 determination of every action and proceeding." Fed. R. Civ. P. 1. As with Plaintiff's other
12 errors, his failure to comply with the Federal Rules of Civil Procedure is compounded by
13 the fact that the Court warned him of the consequences several times. *See* Doc. 3 at 6, 8;
14 Doc. 24 at 10.

15 Finally, Plaintiff has failed to state a claim for relief. Plaintiff's Second Amended
16 Complaint repeats the same claims against the same defendants as his First Amended
17 Complaint. *Compare* Doc. 4, *with* Doc. 27. The Court previously dismissed those
18 defendants and all claims except the claim for injunctive relief. Doc. 24 at 9–10. As the
19 Court explained, Plaintiff cannot seek monetary damages under *Bivens* for his claims. *See*
20 Doc. 24 at 6–8. The only claims that survived the Court's dismissal were claims for
21 injunctive relief. *See* Doc. 24 at 8. Those claims are now moot because Plaintiff has been
22 transferred to a different facility. *See* Doc. 27-1. Thus, even if the Court accepted Plaintiff's
23 untimely amended complaint, and overlooked Plaintiff's failure to notify the Court of his
24 address change, Plaintiff's Second Amended Complaint fails to state a claim.

25 Considering these issues, the Court will dismiss Plaintiff's Second Amended
26 Complaint and order the Clerk to close this case. Because the complaint could not be cured
27 by amendment, the Court will dismiss with prejudice.

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1 **III. Order**

2 Accordingly,

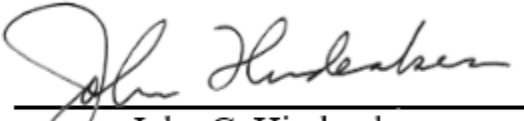
3 **IT IS ORDERED DISMISSING WITH PREJUDICE** Plaintiff's Second
4 Amended Complaint (Doc. 27) for failure to state a claim under 28 U.S.C. § 1915A(b)(1).
5 The Clerk of the Court shall enter judgment accordingly.

6 **IT IS FURTHER ORDERED DIRECTING** the Clerk of the Court to mail
7 Plaintiff (1) a copy of the Court's May 3 Order (Doc. 24), (2) a copy of the Court's June 8
8 Order (Doc. 26), and (3) a copy of this Order, to Plaintiff at the following address:

9 Chance Coles #76364-007
10 USP Atwater
11 U.S. Penitentiary
12 P.O. Box 019001
Atwater, CA 95301

13 **IT IS FURTHER ORDERED DIRECTING** the Clerk of the Court to make an
14 entry on the docket stating that the dismissal for failure to state a claim may count as a
15 "strike" under 28 U.S.C. § 1915(g).

16 Dated this 15th day of September, 2023.

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19 _____
20 John C. Hinderaker
21 United States District Judge
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